

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT D. RINEHART,

CASE NO. 5:07CV2461

PLAINTIFF

JUDGE PETER C. ECONOMUS

V.

**COMMISSIONER OF SOCIAL
SECURITY,**

**MEMORANDUM OPINION
AND ORDER**

DEFENDANT

This matter is an action to review a final decision of the Commissioner of Social Security denying Plaintiff's application for (1) disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§416(i) and 423 *et seq*, and (2) supplemental security income (SSI) pursuant to 42 U.S.C. §1381, *et seq*.

On August 20, 2007, this matter was automatically referred pursuant to L.R. 72.2(b) to Magistrate Judge Kenneth S. McHargh for a Report and Recommendation (Dkt. # 7). On March 28, 2008, Magistrate Judge McHargh issued a Report recommending that the Commissioner's decision be affirmed. (Dkt. # 18). The Magistrate found (1) that the administrative law judge's (ALJ) determination that Plaintiff

does not meet or equal a listed impairment under Listing § 104(A) was supported by substantial evidence, (2) that the ALJ's decision not to obtain testimony from a mental health expert was within the ALJ's discretion, (3) that the ALJ's treatment of the opinions Plaintiff's treating physicians was supported by substantial evidence, and (4) that the ALJ's reliance on the testimony of the vocational expert was supported by substantial evidence. On April 7, 2008, Plaintiff filed objections to the Report and Recommendation of the Magistrate Judge. (Dkt. # 19).

Plaintiff objects to the Magistrate's finding that the ALJ's treatment of the opinion of Dr. Bressi, Plaintiff's treating physician, was supported by substantial evidence. Plaintiff argues that the treating physician rule of 20 C.F.R. § 404.1527(d)(2) requires that Dr. Bressi's opinion be given controlling weight. According to Plaintiff, Dr. Bressi concluded "that Plaintiff is unable to return to remunerative work activity due to his pain level." (Dkt. # 19 at 2). Plaintiff contends that because only Dr. Bressi considered Plaintiff's January 2006 MRI exam, which showed a herniated disc and degenerative changes of the spine, his opinion should control.

While it is true that only Dr. Bressi gave his opinion after considering the January 2006 MRI, that fact alone does not automatically make Dr. Bressi's opinion determinative. The ALJ, in rejecting the opinion, noted that Dr. Bressi's conclusions appeared to be derived in large part from Plaintiff's own statement of his symptoms and limitations, rather than from objective medical evidence. In addition, as the Magistrate noted, Dr. Bressi examined Plaintiff in November 2006 and found him to have 4/5 leg

strength and normal upper body strength, as well as normal reflexes and sensation, though his range of motion was limited. Furthermore, Dr. Bressi's opinion was inconsistent with the weight of other opinion evidence in the record. In evaluating the ALJ's treatment of Dr. Bressi's opinion, the Magistrate found that the ALJ had considered a majority of the factors listed in 20 C.F.R. § 404.1527(d)(2) and determined that Dr. Bressi's opinion was not entitled to controlling weight. Based on the foregoing, the ALJ's rejection of Dr. Bressi's opinion was supported by substantial evidence.

The Court has reviewed the Report and Recommendation of the Magistrate Judge *de novo* and finds that it is well-supported, and that Plaintiff's objections are without merit.

Therefore, the Report and Recommendation of Magistrate Judge McHargh is hereby **ADOPTED**. (Dkt. # 18). The decision of the Commissioner that Plaintiff was not disabled is **AFFIRMED**. Accordingly, this matter is **DISMISSED**.

IT IS SO ORDERED.

/s/ Peter C. Economus - May 1, 2008
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE